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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,085	02/11/2004	Dilip Tapadiya	TAPADI.003C3	2366
20995	7590	10/04/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			BOGART, MICHAEL G	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3761	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/776,085	<b>Applicant(s)</b> TAPADIYA, DILIP	
	<b>Examiner</b> Michael G. Bogart	<b>Art Unit</b> 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 124-133 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 124-133 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11 February 2004</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the apparatus of claims 127-133 must be shown or the feature(s) canceled from the claim(s). It is noted that figure 15 shows prior art structure which claim 127 appears to be an improvement of (see specification at paragraphs 0233-0245). However, claim 127's first connector having a second connector inner diameter that is smaller than the first connector inner diameter is not shown in the drawings. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections – 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 127 and 130 and 131 are rejected under 35 U.S.C. § 102(b) as being anticipated by Niedospial, Jr. (US 6,287,289 B1).

Regarding claim 127, Niedospial, Jr. teaches a medical hose kit comprising a sterilized package containing a sterilized length of hose (14), the hose (14) having first and second hose ends and a first hose inner diameter, at least a first connector (30) disposed at the first end, the first connector (30) having a first connector end defining first connector inner diameter (proximal opening) that is about the same as the first hose inner diameter, the first connector having a second connector inner diameter (56) that is smaller than the first connector inner diameter (see figures 3A and 8, below)(column 2, lines 21-41).

Regarding the limitation to a suction tube and claim 130, applicants have not claimed any physical structure which defines this from the conventional tube of the reference.

Regarding claim 131, the first connector is connection with a syringe which can draw fluid therefrom via internal vacuum, (column 2, lines 55-65).

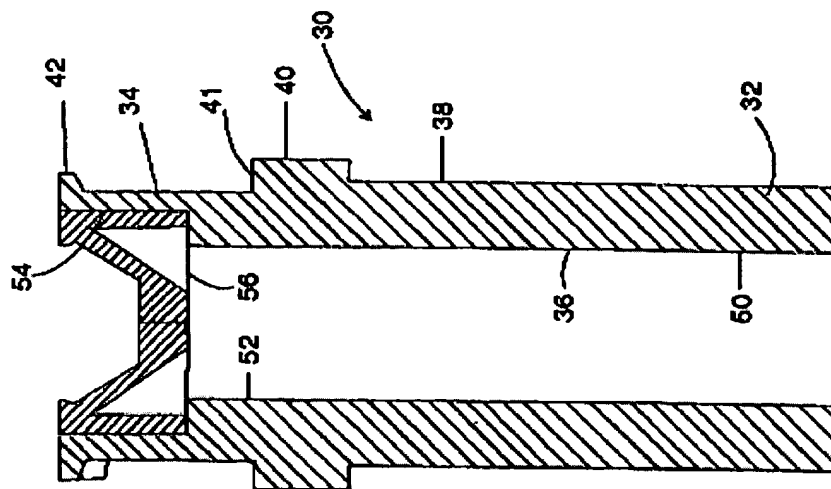


FIG. 3A

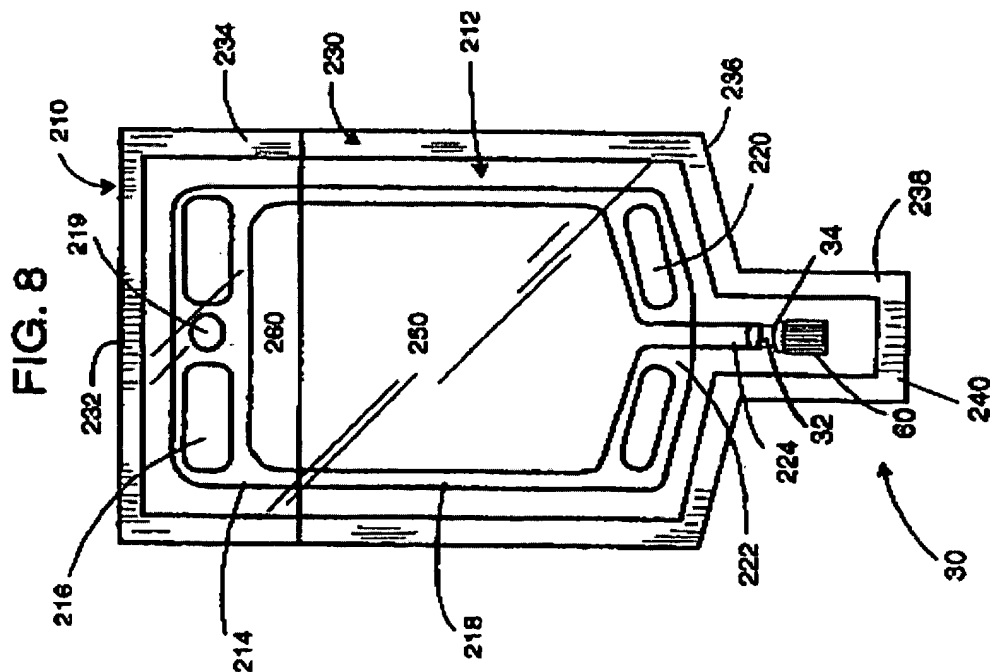


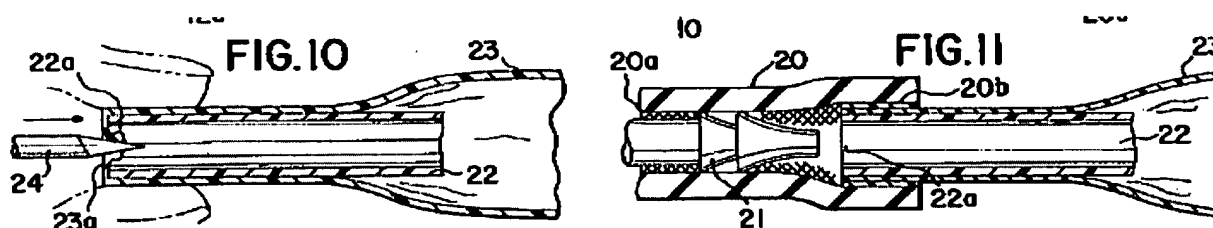
FIG. 8

Claims 127 and 130-133 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bryan *et al.* (US 5,582,165 A).

Regarding claim 127, Bryan *et al.* teach a medical hose kit comprising a sterilized package (23) containing a sterilized length of hose (10, 22), the hose (10, 22) having first and

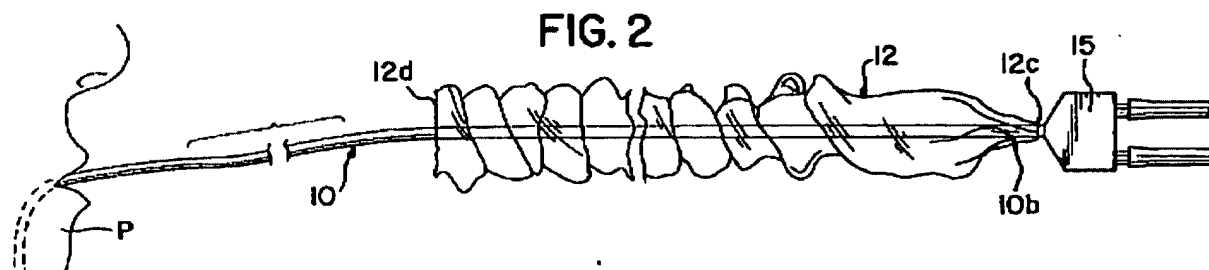
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second hose ends and a first hose inner diameter, at least a first connector (20, 21) disposed at the first end (22a), the first connector (20, 21) having a first connector end (20b) defining first connector inner diameter that is about the same as the first hose (10, 22) inner diameter, the first connector (20) having a second connector inner diameter (in side connector element 21) that is smaller than the first connector inner diameter (column 4, lines 30-48)(see figures 10 and 11, below).



Regarding claim 130, Bryan *et al.* teach that the catheter (10, 22) is a suction hose that is applied for endotracheal suctioning. Structurally, this hose meets all the limitations of the claimed suction hose.

Regarding claims 131-133, Bryan *et al.* teach that the first connector (20, 21) is connected to a suction device that may be held by hand (10)(see figure 2, below).



***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 122-126 and 128 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bryan *et al.*

Regarding claim 122, Bryan *et al.* teach a medical kit comprising a sterilized package (12, 23) containing a sterilized length of suction hose (10, 22), the suction hose (10, 22).

Bryan *et al.* do not teach the specifically claimed inner diameter of the suction hose.

Mere changes in the relative size of an element are not sufficient to patentably distinguish a claimed invention over the prior art. See *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

Regarding claim 123, Bryan *et al.* teach a length of suction hose (27) which includes first and second ends, and first (14, 20) and second female (25) adapters connected to the first and second ends, respectively.

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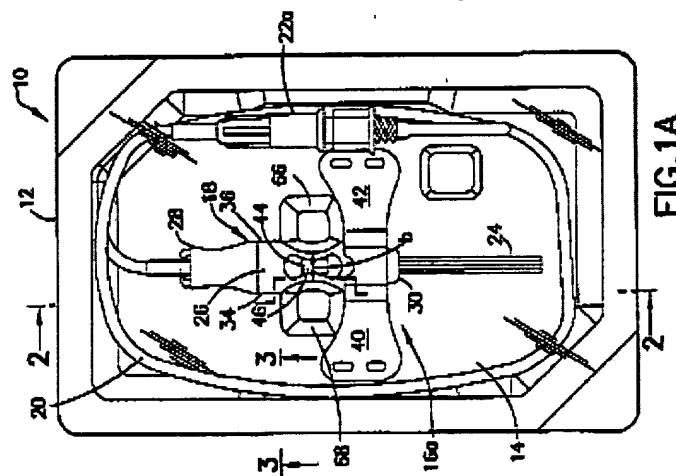
Regarding claims 124 and 128, Bryan *et al.* teach that the first female adapter (14, 20) is configured to be connectable with an outlet of a suction device (10, 20). Regarding the specific diameter, see the discussion of claim 122, *supra*.

Regarding claims 125 and 126, Bryan *et al.* teach that the first connector (20, 21) is connected to a suction device than can be held by hand (10)(figure 2).

Claim 129 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Bryan *et al.* as applied to claims 127 and 130-133 above, and further in view of Giard, Jr. *et al.* (US 2003/0062281 A1).

Bryan *et al.* do not expressly disclose that the suction hose is coiled inside the package.

Giard, Jr. *et al.* teach packaging (12) for a medical collection device that includes a coiled tube (20)(see figure 1A, below).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to adopt the coiled tube configuration of Giard, Jr. *et al.* for the kit of Bryan *et al.* in order to provide a compact kit size for storage.




***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
30 September 2005

**TATYANA ZALUKAEVA  
PRIMARY EXAMINER**

